

09-12-05



PATENT

D&C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Neil Anderson et al.

Application No.: 09/503,380

Filed: February 14, 2000

For: Chrysanthemum Plant Named 95-157-6

Attorney Docket No.: BAL6019P0190US

Examiner: M. Kizilkaya

Group Art Unit: 1661

Certificate of Mailing:

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being sent by Express Mail having Express Mail Number EV576546775US to the Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on September 9, 2005.

Lydia Liepinaitis
LYDIA LIEPINAITIS

#12

**PETITION FOR REVIVAL OF AN APPLICATION FOR A PATENT
ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. §1.137(b)**

Box Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED
SEP 15 2005
OFFICE OF PETITIONS

Dear Sir:

1. A final Office Action concerning the above-identified plant patent application was mailed on June 18, 2002.
2. This application became abandoned for failure to respond to the Office Action on September 19, 2002.
3. The facts relating to the above-identified plant patent application becoming abandoned are provided below.

The undersigned attorney prepared and prosecuted the above-identified plant patent application as well as the plant patent and utility applications having U.S. Application Nos. 09/503,361, 09/504,337, 09/503,578, 09/503,379, 09/503,271, 09/999,621, 09/999,620, 10/000,104, 10/001,066, 10/001,060 and

10/000,103 (the applications having the aforementioned U.S. Application Numbers are hereinafter collectively referred to as the "Chrysanthemum applications"). The above-identified plant patent application was filed while I was employed by the law firm of Rockey, Milnamow & Katz. Ltd. (hereinafter the "Rockey Firm"). In September 2001, I left the Rockey Firm and took the above-identified plant patent application and the Chrysanthemum applications with me (See Declaration of Lisa V. Mueller (hereinafter "Mueller Declaration"), Paragraph 4). When I left the Rockey Firm, the docketing records of the Rockey Firm were revised to reflect that the above-identified plant patent application was "transferred" (See Declaration of Wendy Lostumbo (hereinafter "Lostumbo Declaration"), Paragraph 4) and Declaration of Kimberly Soto (hereinafter "Soto Declaration"), Paragraph 4).

In March 2002, the Rockey Firm dissolved and a number of attorneys and staff from the Rockey Firm joined Wood, Phillips, Katz, Clark & Mortimer (hereinafter referred to as the "Firm"). Two of the staff from the Rockey Firm that joined the Firm were Ms. Wendy Lostumbo and Ms. Kimberly Soto. Ms. Lostumbo and Ms. Soto worked in the docketing department of the Rockey Firm (See Lostumbo Declaration, Paragraph 4 and Soto Declaration, Paragraph 4). After the dissolution of the Rockey Firm, Ms. Lostumbo and Ms. Soto joined the docketing department of the Firm. As part of their move to the Firm, Ms. Lostumbo and Ms. Soto brought the docketing system from the Rockey Firm, which utilized the Alecto® software, to the Firm (See Lostumbo Declaration, Paragraph 4 and Soto Declaration, Paragraph 4). This docketing system contained all of the docketing records for the patent and trademark files being brought to the Firm by the attorneys who had been at the Rockey Firm (See Lostumbo Declaration, Paragraph 4 and Soto Declaration, Paragraph 4). This docketing system was run in parallel with the existing docketing system of the Firm which utilized different software (hereinafter referred to as the "Existing Docketing System") (See Lostumbo Declaration, Paragraph 4 and Soto Declaration, Paragraph 4). The Existing Docketing System contained all the

patent and trademark docketing records for the attorneys of the Firm who had not come from the Rockey Firm (See Lostumbo Declaration, Paragraph 4 and Soto Declaration, Paragraph 4). These two docketing systems were run in parallel while Ms. Lostumbo and Ms. Soto were employed by the Firm (See Lostumbo Declaration, Paragraph 4 and Soto Declaration, Paragraph 4).

In May 2002, I joined the Firm and brought the above-identified plant patent application and the Chrysanthemum applications with me to the Firm (See Mueller Declaration, Paragraph 4).

The above plant patent application as well as the Chrysanthemum applications are owned by the Regents of the University of Minnesota (hereinafter "University") (See Mueller Declaration, Paragraph 6). The University's licensee has/had primary responsibility for filing, prosecuting and maintaining this plant patent application and I received instructions regarding the filing, prosecution and maintenance of these plant patent and utility patent applications directly from the licensee. On October 28, 2002, I received a letter from the licensee informing me that a decision had been made to drop all of the pending utility patent applications directed to the Chrysanthemum varieties (See Mueller Declaration, Paragraph 6). The licensee stated that it intended to continue prosecuting all of the pending plant patent applications for the Chrysanthemum plants (See Mueller Declaration, Paragraph 6).

On November 12, 2002, I sent a letter via Federal Express to the University informing it that the licensee did not intend to continue prosecuting the utility patent applications having the titles "Chrysanthemum Variety Named 95-157-6", "Chrysanthemum Variety Named 95-105-6", "Chrysanthemum Variety Named 92-333-2", "Chrysanthemum Variety 90-275-27", "Chrysanthemum Variety Named 98-M91-1" and "Chrysanthemum Variety Named 98-E90-15" (See Mueller Declaration, Paragraph 7). I also advised the University that the corresponding plant patent applications would continue to be prosecuted by the

licensee (See Mueller Declaration, Paragraph 7). I further informed the University that there were some outstanding deadlines in one or more of the utility patent applications and that the University needed to advise me by December 15, 2002 if it wished to continue the prosecution of any of these applications (See Mueller Declaration, Paragraph 7). I concluded my letter by stating that that if I did not hear from the University by the close of business on December 15, 2002, that each of the utility patent applications listed above would be abandoned (See Mueller Declaration, Paragraph 7).

My secretary was responsible for pulling the correct files for each of utility patent applications that were to be abandoned pursuant to the licensee's October 28th letter (See Mueller Declaration, Paragraph 8). Once these files were pulled, my secretary was further responsible for placing a copy of the licensee's October 28th letter and my November 12th letter to the University on each file (usually with a rubber band) and giving the files with the letters attached to them to the docketing department per the Firm's standard docketing procedure (See Mueller Declaration, Paragraph 8, Lostumbo Declaration, Paragraph 6 and Soto Declaration, Paragraph 6).

I never received any response from the University regarding my November 12, 2002 letter (See Mueller Declaration, Paragraph 9).

On July 25, 2005, I learned, after an inquiry by the University on July 22, 2005, that the above-identified plant patent application had been unintentionally abandoned. Specifically, a review of the docketing records and file for the above-identified plant patent application revealed: (1) that the docketing department at the Rockey Firm mistakenly entered the above-identified plant patent application as a "national" (i.e. utility) patent application instead of a plant patent application when it initially created the docketing record for this application back in 2000 (See Mueller Declaration, Paragraph 10, Lostumbo Declaration, Paragraph 4 and Soto Declaration, Paragraph 4); (2) that my secretary at that

time mistakenly attached a copy of the licensee's October 28th letter and my November 12th letter to the University to the above-identified plant patent application instead of to the file for U.S. application number 09/503,351 (BAL6019P0130US) (See Mueller Declaration, Paragraph 10); (3) the docketing department did not realize that the above-identified plant patent application had been originally entered into the docketing records as a "national" patent application instead of a "plant" patent application and that my November 12th letter had been attached to the wrong file when they revised the docketing record for the above-identified patent application on January 13, 2003 to change the status of this application as being "abandoned" (See Mueller Declaration, Paragraph 10, Lostumbo Declaration, Paragraph 8 and Soto Declaration, Paragraph 8).

More specifically, the Firm's docketing records show that on January 13, 2003 that the docketing department changed the status of the docketing records of utility patent application numbers 09/504,337, 09/999,621, 10/000,104 and 10/001,060 and the above-identified plant patent application from pending to abandoned pursuant to the licensee's letter dated October 28, 2002 (See Mueller Declaration, Paragraph 10, Lostumbo Declaration, Paragraph 8 and Soto Declaration, Paragraph 8). The docketing record for utility patent application number 09/503,379 was changed from pending to abandoned on January 8, 2003 (See Mueller Declaration, Paragraph 10). The docketing records for plant patent application numbers 09/503,578, 09/503,271, 09/999,620, 10/001,066 and 10/000,103 were not revised on January 13, 2003 (See Mueller Declaration, Paragraph 10). The above-identified plant patent application was the only plant patent application in which the docketing department made a mistake in revising the docketing record to change the status from pending to abandoned (See Mueller Declaration, Paragraph 10).

Once the status of the above-identified patent application was changed from pending to abandoned on January 13, 2003, I did not receive any further

docketing reminders on my daily, weekly or monthly docketing reports for the above-identified plant patent application (See Mueller Declaration Paragraph 11).

Until July 25, 2005, I failed to appreciate that a mistake had been made in connection with the above-identified plant patent application and that this application had been unintentionally abandoned (See Mueller Declaration, Paragraph 12).

4. Applicants failure to respond to the Office Action was unintentional. The entire delay in filing the enclosed required reply from the due date of the Office Action until the filing of this petition was unintentional (37 C.F.R. §1.137 (b)(3)).

5. In response to said Office Action, enclosed herewith is an Amendment and a Request for Continued Examination.

6. A Petition Fee in the amount of \$1500.00 is enclosed. Applicants hereby authorize the Commission to charge Deposit Account No. 23-0785 for any fees that may be required as a result of the filing of this paper.

7. Applicants respectfully request that this Petition to Revive the above-identified application be granted.

8. A duplicate copy of this petition is enclosed.

Respectfully submitted,

Neil Anderson et al.

A handwritten signature in cursive script, appearing to read "Lisa V. Mueller", written over a horizontal line.

Lisa V. Mueller

Registration No. 38,978

Attorney for Applicants

Wood, Phillips, Katz, Clark & Mortimer
500 West Madison Street
Suite 3800
Chicago, IL 60662-2511

Tel.: (312) 876-2109
Fax.: (312) 876-2020



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT

Applicant: Neil Anderson *et al.*

Application No.: 09/503,380

Filed: February 14, 2000

For: Chrysanthemum Plant Named 95-157-6

Attorney Docket No.: BAL6019P0190US

Examiner: M. Kizilkaya

Group Art Unit: 1661

Certificate of Mailing:

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being sent by Express Mail having Express Mail Number EV576546775US to the Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on September 9, 2005.

Lydia Liepinaitis
LYDIA LIEPINAITIS

DECLARATION OF LISA V. MUELLER

Box Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED
SEP 15 2005
OFFICE OF PETITIONS

Dear Sir:

I, Lisa V. Mueller, declare:

1. I am an attorney in the law firm of Wood, Phillips, Katz, Clark & Mortimer (hereinafter referred to as the "Firm").
2. I am the attorney of record in the above-identified plant patent application. I prepared and prosecuted the above-identified plant patent application (Attorney Docket No. BAL6019P0190US) as well as a utility patent application filed on February 14, 2000 which was assigned U.S. application number 09/503,361 and entitled "Chrysanthemum Variety 95-157-6" (Attorney Docket No. BAL6019P0130US).
3. I also prepared and prosecuted and am the attorney of record in the plant patent and utility patent applications listed in the table below:

Attorney Docket No.	Status	Patent Application Type	Title	Application No.	Filing Date
BAL6019P0140US	Abandoned	Utility	Chrysanthemum Variety 95-105-6	09/504,337	02/14/2000
BAL6019P0200US	Granted	Plant	Chrysanthemum Plant Named 95-105-6	09/503,578	02/14/2000
BAL6019P0170US	Abandoned	Utility	Chrysanthemum Variety 92-333-2	09/503,379	02/14/2000
BAL6019P0230US	Granted	Plant	Chrysanthemum Plant named 92-333-2	09/503,271	02/14/2000
BAL6019P0700US	Abandoned	Utility	Chrysanthemum Variety 90-275-27	09/999,621	10/30/2001
BAL6019P0690US	Granted	Plant	Chrysanthemum Plant Named 90-275-27	09/999,620	10/30/2001
BAL6019P0710US	Abandoned	Utility	Chrysanthemum Variety 98-M91-1	10/000,104	10/30/2001
BAL6019P0420US	Granted	Plant	Chrysanthemum Plant named 98-M91-1	10/001,066	10/30/2001
BAL6019P0730US	Abandoned	Utility	Chrysanthemum Variety 98-E90-15	10/001,060	10/30/2001
BAL6019P0440US	Granted	Plant	Chrysanthemum Plant Named 98-E90-15	10/000,103	10/30/2001

4. From June 1995 – September 2001, I was employed by the law firm of Rockey, Milnamow & Katz, Ltd. (hereinafter the “Rockey Firm”). I left the Rockey Firm at the end of September 2001, taking the above-identified plant patent application as well as the application files for U.S. Application Nos. 09/503,361, 09/504,337, 09/503,578, 09/503,379, 09/503,271, 09/999,621, 09/999,620, 10/000,104, 10/001,066, 10/001,060 and 10/000,103 (the applications having the aforementioned U.S. Application Numbers are hereinafter

collectively referred to as the "Chrysanthemum applications"). In March 2002, the Rockey Firm dissolved and a number of attorneys from the Rockey Firm joined the Firm. In May 2002, I joined the Firm and brought the above-identified plant patent application and the Chrysanthemum applications with me to the Firm.

5. A final Office Action was received in the above-identified plant patent application on June 18, 2002. On September 18, 2002, a Notice of Appeal was filed.

6. All of the above plant patent and utility patent applications are owned by the Regents of the University of Minnesota (hereinafter "University"). The University's licensee has/had primary responsibility for filing, prosecuting and maintaining these patent applications. I received instructions regarding the filing, prosecution and maintenance of these plant patent and utility patent applications directly from the licensee. On October 28, 2002, I received a letter from the licensee informing me that a decision had been made to drop all of the pending utility patent applications directed to the Chrysanthemum varieties. The licensee stated that it intended to continue prosecuting all of the pending plant patent applications for the Chrysanthemum plants.

7. On November 12, 2002, I sent a letter via Federal Express to the University informing it that the licensee did not intend to continue prosecuting the utility patent applications having the titles "Chrysanthemum Variety Named 95-157-6", "Chrysanthemum Variety Named 95-105-6", "Chrysanthemum Variety Named 92-333-2", "Chrysanthemum Variety 90-275-27", "Chrysanthemum Variety Named 98-M91-1" and "Chrysanthemum Variety Named 98-E90-15". I also advised the University that the corresponding plant patent applications would continue to be prosecuted by the licensee. I further informed the University that there were some outstanding deadlines in one or more of the utility patent applications and that the University needed to advise me by

December 15, 2002 if it wished to continue the prosecution of any of these applications. I concluded my letter by stating that that if I did not hear from the University by the close of business on December 15, 2002, that each of the utility patent applications listed above would be abandoned.

8. My secretary (who is no longer with the Firm) was responsible for pulling the correct files for each of utility patent applications that were to be abandoned pursuant to the licensee's October 28th letter. Once these files were pulled, my secretary was further responsible for placing a copy of the licensee's October 28th letter and my November 12th letter to the University on each file (usually with a rubber band) and giving the files with the letters attached to them to the docketing department per the Firm's standard docketing procedure.

9. I never received any response from the University regarding my November 12, 2002 letter.

10. On July 25, 2005, I learned, after an inquiry by the University on July 22, 2005, that the above-identified plant patent application had been unintentionally abandoned. Specifically, a review of the docketing records and file for the above-identified plant patent application revealed: (1) that the docketing department at the Rockey Firm entered the above-identified plant patent application as a "national" (i.e. utility) patent application instead of a plant patent application when it initially created the docketing record for this application back in February 2000; (2) that my secretary mistakenly attached a copy of the licensee's October 28th letter and my November 12th letter to the University to the file for the above-identified plant patent application instead of to the file for U.S. application number 09/503,351 (BAL6019P0130US); (3) the docketing department at the Firm did not realize that the wrong letter (my November 12th letter) had been attached to the wrong file when it revised the docketing record for the above-identified patent application on January 13, 2003 to change the status of this application as being "abandoned". In fact, the "comments" portion

of the docketing record for the above-identified plant patent application shows that this application was to be abandoned per "client's 10/28/02 letter.

More specifically, a review of the Firm's docketing records shows that on January 13, 2003 that the docketing department changed the status of the docketing records of utility patent application numbers 09/504,337, 09/999,621, 10/000,104 and 10/001,060 and the above-identified plant patent application from pending to abandoned pursuant to the licensee's letter dated October 28, 2002. The docketing record for utility patent application number 09/503,379 was changed from pending to abandoned on January 8, 2003. The docketing records for plant patent application numbers 09/503,578, 09/503,271, 09/999,620, 10/001,066 and 10/000,103 were not revised on January 13, 2003. Apparently, the above-identified plant patent application was the only plant patent application in which the docketing department made a mistake in revising the docketing record to change the status from pending to abandoned.

11. Once the status of the above-identified patent application was changed from pending to abandoned on January 13, 2003, I did not receive any further docketing reminders on my daily, weekly or monthly docketing reports for the above-identified plant patent application.

12. Until July 25, 2005, I failed to appreciate that a mistake had been made in connection with the above-identified plant patent application and that this application had been unintentionally abandoned.

13. I hereby declare that all statements made herein are of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States

Code and such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Lisa V. Mueller

Lisa V. Mueller

September 9, 2005

Date



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Neil Anderson *et al.*

Application No.: 09/503,380

Filed: February 14, 2000

For: Chrysanthemum Plant Named 95-157-6

Attorney Docket No.: BAL6019P0190US

Examiner: M. Kizilkaya

Group Art Unit: 1661

Certificate of Mailing:

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being sent by Express Mail having Express Mail Number EV576546775US to the Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on September 9, 2005.

Lydia Lepina
LYDIA LEPINAITIS

DECLARATION OF WENDY LOSTUMBO

Box Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED
SEP 15 2005
OFFICE OF PETITIONS

Dear Sir:

I, Wendy Lostumbo, declare:

1. I was employed at the law firm of Wood, Phillips, Katz, Clark & Mortimer (hereinafter referred to as the "Firm") from March 25, 2002 to September 5, 2003 in the docketing department.
2. I have been employed in the docketing of patent and trademark matters in one form or another for over fourteen (14) years.
3. Currently, I am employed by the Evan Law Group, LLC. Currently, I docket due dates for U.S. and foreign patent matters, prepare and file certain U.S. and foreign patent documents and prepare information disclosure statements.
4. A review of the Firm's records indicates that the above-identified plant patent application was entered into the docketing records of the law firm of Rockey, Milnamow & Katz, Ltd. (hereinafter referred to as the "Rockey Firm")

sometime in February 2000. I began working in the docketing department at the Rockey Firm on July 31, 2000. At the Rockey Firm, all patent and trademark due dates were docketed on the Rockey Firm's docketing system, which utilized the ALECTO® software. A review of the Firm's records indicates that at the time the docketing record for the above-identified plant patent application was created in February 2000, the docketing record was mistakenly opened as a "national" (i.e. utility) patent application instead of a "plant" application.

During my employment at the Rockey Firm, I worked with Ms. Soto and Ms. Arlene Annerino in the docketing department. During that period, Ms. Soto, Ms. Annerino and I were the only three people at the Rockey Firm that entered, maintained and revised the patent and trademark docketing records at the Rockey Firm. Ms. Soto, Ms. Annerino and I worked very closely together when updating and revising the Rockey Firm's docketing records. In fact, I was trained to continuously check every significant docket entry made by myself as well as by Ms. Soto and Ms. Annerino. On a daily basis and while employed by the Rockey Firm, I continuously checked every significant docket entry made by myself as well as by Ms. Soto and Ms. Annerino.

Mrs. Mueller left the Rockey Firm at the end of September 2001, taking the above-identified plant patent application. Sometime after Mrs. Mueller left the Rockey Firm, the docketing record for the above-identified plant patent application was revised by Ms. Soto, Ms. Annerino or I to reflect that this application was "transferred". Once this docketing record was revised to reflect that this application was "transferred", no further reminders were generated for this application.

In March 2002, the Rockey Firm dissolved and a number of attorneys and staff, including Ms. Soto and I, joined the Firm. Ms Soto and I became a part of the docketing department of the Firm. As part of the move to the Firm, Ms. Soto and I brought the docketing system from the Rockey Firm. This docketing

system contained all of the docketing records for the patent and trademark files being brought to the Firm by the attorneys who had been at the Rockey Firm. This docketing system became a docketing system for the Firm. This docketing system was run in parallel with the existing docketing system of the Firm which utilized different software (hereinafter referred to as the "Existing Docketing System"). The Existing Docketing System contained all the patent and trademark docketing records for the attorneys of the Firm who had not come from the Rockey Firm. These two docketing systems were run in parallel while Ms. Soto and I were employed by the Firm.

In May 2002, Mrs. Mueller joined the Firm. Mrs. Mueller brought the above-identified plant patent application. At that time, the original docketing record created at the Rockey firm for the above-identified plant patent application was still in the Firm's docketing system that utilized the Alecto® software. Sometime after Mrs. Mueller joined the Firm in May 2002, either Ms. Soto or I reactivated the docketing record for the above-identified plant patent application. Specifically, the docketing record for the above-identified plant patent application was revised to reflect that the status of the above-identified application as no longer "transferred" but "pending". Also, the docketing record was updated for any new due dates that had arisen since the time Mrs. Mueller had left the Rockey Firm until the time she joined the Firm. Once the status of the docketing record for the above-identified plant patent application was changed from "transferred" to "pending", docketing reminders were generated for this application.

5. With respect to the docketing system that utilized the ALECTO® software, Ms. Soto and I entered, maintained and revised the patent and trademark docketing records on this system. Ms. Soto and I worked very closely together when updating and revising the Firm's docketing records. Additionally, as explained above, I was trained to continuously check every significant docket entry made by myself as well as by Ms. Soto. In view of this training, on a daily

basis not only did I check every significant docket entry made by myself, but also by Ms. Soto as well.

6. While employed by the Firm, I handled a large number of responsibilities, including updating and revising the Firm's docketing records (on the docketing system that utilized the ALECTO® software) upon receipt of instructions from a client or an attorney to abandon a pending patent application or issued patent. The Firm had very specific procedures in place to handle files that were to be abandoned. The procedure was as follows. First, when a client sent instructions or an attorney sent a letter advising a client that a certain patent application or patent was to be abandoned, it was required that a copy of such instructions or letter be provided to the Firm's docketing department. More specifically, the secretary of the attorney responsible for the patent application or patent was required to pull the correct file that was to be abandoned and place a copy of the instructions or letter on the outside of the file to be abandoned (which was usually done with a rubber band). Then, the entire file, with a copy of the instructions or letter rubber banded on top was given to the docketing department. Second, either Ms. Soto or I would then place the file on a shelf specifically set up for all patent application or patent files that were to be abandoned. Third, if the patent application or patent to be abandoned had an immediate due date, Ms. Soto and I would, within a few days of receipt of the file, revise all records on the Firm's docketing system relating to the relevant patent application or patent to reflect that the status of the patent application or patent was "abandoned" and all due dates in connection with this patent application or patent were "closed" (meaning completed). Alternatively, if there was not an immediate due date for the patent application or patent to be abandoned, Ms. Soto and I would set aside some time, as our work priorities permitted, from our day and remove the patent applications or patents from the abandoned shelf and revise all records on the docketing system to reflect that the status of each of these patent applications or patents was "abandoned". Specifically, the way in which this was done in each instance was that either Ms. Soto or I would sit at

one of the Firm's docketing computers. While one of us sat at the computer to revise the docketing records, the other physically worked with the file. The person working with the file would read the instructions or letter out loud so the person working at the computer could hear what the instructions were and what patent application or patent was to be abandoned. The person reading the letter would review the file attached to the instructions or letter to make sure that the correct file had been pulled and matched with the instructions or letter. Once this was verified, the person working with the file would provide the person sitting at the computer with the file number. The person working the computer would type in the file number and read the information in the docket record back to the person working with the file to verify that the docketing record matched the file and the instructions or letter. Once this information was verified, the person working with the file would write the file number on the instructions or letter, hole punch the instructions or letter, place the instructions or letter in the file and stamp the file "abandoned". At the same time, the person working on the computer would revise all records on the docketing system to reflect that the status of the patent application or patent was "abandoned". In the "comments" portion of the docketing record, the person working with the computer would type in who had provided instructions authorizing the abandonment of a patent application or patent and the date on which such instructions had been provided. Once the docketing record for a patent application or patent was revised to be "abandoned" no further reminders of any kind were ever again generated.

7. Sometime in November 2002, the docketing department received, from Mrs. Mueller's secretary, the above-identified file, as well as the files for the following U.S. Application Numbers 09/504,337, 09/999,621, 10/000,104 and 10/001,060 with the following documents rubber banded around each of these files: (1) a copy of a letter that Mrs. Mueller received from the licensee of the above-identified application dated October 28, 2002 indicating that it did not intend to continue prosecuting all of the utility patent applications directed to the Chrysanthemum Varieties but that it intended to continue prosecuting all plant

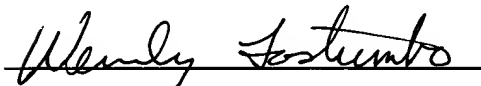
patent applications to the Chrysanthemum Plants; and (2) a copy of a letter dated November 12, 2002 that Mrs. Mueller sent, via Federal Express to the Regents of the University of Minnesota ("University") informing it that its licensee did not intend to continue prosecuting the utility patent applications having the titles "Chrysanthemum Variety Named 95-157-6", "Chrysanthemum Variety Named 95-105-6", "Chrysanthemum Variety Named 92-333-2", "Chrysanthemum Variety 90-275-27", "Chrysanthemum Variety Named 98-M91-1" and "Chrysanthemum Variety Named 98-E90-15". In her letter, Mrs. Mueller also advised the University that the corresponding plant patent applications would continue to be prosecuted. Either Ms. Soto or I received each of these files from Mrs. Mueller's secretary and placed them on the abandoned shelf.

8. According to the Firm's docketing records, on January 13, 2003, either Ms. Soto or I was working on the docketing computer. Whichever one of us was working on the computer, the other one (either Ms. Soto or myself) would have been physically working with the above-identified plant patent application file as well as the utility patent application files for U.S. application numbers 09/504,337, 09/999,621, 10/000,104 and 10/001,060. Apparently, neither Ms. Soto nor I realized that when we revised the status of the above-identified plant patent application from "pending" to "abandoned" pursuant to our established docketing procedures, that this application had been incorrectly entered into the docketing records as a "national" patent application instead of a "plant" patent application and that Mrs. Mueller's November 12th letter was attached to the wrong file. The application serial numbers for each of the utility patents to be abandoned were not listed in Mrs. Mueller's November 12th letter and the title in the utility patent application and plant patent application differed by only one word. Therefore, I believe that when Ms. Soto and I revised this docketing record we believed that we were working with the correct docketing record and file for a utility patent application. Thereupon, we did not realize that we were making a mistake when we revised the docketing record for the above-identified plant patent application from "pending" to "abandoned". Once the docketing record for

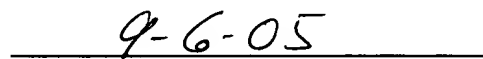
the above-identified plant patent application was revised to reflect that the status of this application was abandoned, no further reminders were generated for this application.

9. On May 29, 2003, the docketing department received a Notice of Abandonment for the above-identified plant patent application (which was forwarded to the Firm's docketing department from Gardner Carton & Douglas). After reviewing the docketing record for this application and seeing that according to the docketing record this application was to be abandoned, either Ms. Soto or I wrote on the top of the Notice of Abandonment that the file was on the abandoned shelf. We then matched the Notice of Abandonment with the file.

10. I hereby declare that all statements made herein are of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Wendy Lostumbo



Date



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Neil Anderson *et al.*

Application No.: 09/503,380

Filed: February 14, 2000

For: Chrysanthemum Plant Named 95-157-6

Attorney Docket No.: BAL6019P0190US

Examiner: M. Kizilkaya

Group Art Unit: 1661

Certificate of Mailing:

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being sent by Express Mail having Express Mail Number EV576546775US to the Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on September 9, 2005.

Lydia Liepinaitis

LYDIA LIEPINAITIS

DECLARATION OF KIMBERLY SOTO

Box Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I, Kimberly Soto, declare:

1. I was employed at the law firm of Wood, Phillips, Katz, Clark & Mortimer (hereinafter referred to as the "Firm") from March 25, 2002 to September 5, 2003 in the docketing department.

2. I have been employed in the docketing of patent and trademark matters in one form or another for over sixteen (16) years.

3. Currently, I am employed by Leydig, Voit & Mayer, Ltd as an Assistant Manager in the docketing department. I am responsible for implementing new docketing procedures, the docketing of U.S. and foreign correspondence and the paying annuity fees.

4. A review of the Firm's records indicates that the above-identified plant patent application was entered into the docketing records of the law firm of Rockey, Milnamow & Katz, Ltd. (hereinafter referred to as the "Rockey Firm")

sometime in February 2000. I began working in the docketing department at the Rockey Firm on April 3, 2000. At the Rockey Firm, all patent and trademark due dates were docketed on the Rockey Firm's docketing system, which utilized the ALECTO® software. A review of the Firm's records indicates that at the time the docketing record for the above-identified plant patent application was created in February 2000, the docketing record was mistakenly opened as a "national" (i.e. utility) patent application instead of a "plant" application.

During my employment at the Rockey Firm, I worked with Ms. Wendy Lostumbo and Ms. Arlene Annerino in the docketing department. During that time period, Ms. Lostumbo, Ms. Annerino and I were the only three people at the Rockey Firm that entered, maintained and revised the patent and trademark docketing records at the Rockey Firm. Ms. Lostumbo, Ms. Annerino and I worked very closely together when updating and revising the Rockey Firm's docketing records. In fact, I was trained to continuously check every significant docket entry made by myself as well as by Ms. Lostumbo and Ms. Annerino. On a daily basis and while employed by the Rockey Firm, I continuously checked every significant docket entry made by myself as well as by Ms. Lostumbo and Ms. Annerino.

Mrs. Mueller left the Rockey Firm at the end of September 2001, taking the above-identified plant patent application. Sometime after Mrs. Mueller left the Rockey Firm, the docketing record for the above-identified plant patent application was revised by Ms. Lostumbo, Ms. Annerino or I to reflect that this application was "transferred". Once this docketing record was revised to reflect that this application was "transferred", no further reminders were generated for this application.

In March 2002, the Rockey Firm dissolved and a number of attorneys and staff, including Ms. Lostumbo and I, joined the Firm. Ms. Lostumbo and I became a part of the docketing department of the Firm. As part of the move to the Firm,

Ms. Lostumbo and I brought the docketing system from the Rockey Firm. This docketing system contained all of the docketing records for the patent and trademark files being brought to the Firm by the attorneys who had been at the Rockey Firm. This docketing system became a docketing system for the Firm. This docketing system was run in parallel with the existing docketing system of the Firm which utilized different software (hereinafter referred to as the "Existing Docketing System"). The Existing Docketing System contained all the patent and trademark docketing records for the attorneys of the Firm who had not come from the Rockey Firm. These two docketing systems were run in parallel while Ms. Lostumbo and I were employed by the Firm.

In May 2002, Mrs. Mueller joined the Firm. Mrs. Mueller brought the above-identified plant patent application. At that time, the original docketing record created at the Rockey firm for the above-identified plant patent application was still in the Firm's docketing system that utilized the Alecto® software. Sometime after Mrs. Mueller joined the Firm in May 2002, either Ms. Lostumbo or I reactivated the docketing record for the above-identified plant patent application. Specifically, the docketing record for the above-identified plant patent application was revised to reflect that the status of the above-identified application as no longer "transferred" but "pending". Also, the docketing record was updated for any new due dates that had arisen since the time Mrs. Mueller had left the Rockey Firm until the time she joined the Firm. Once the status of the docketing record for the above-identified plant patent application was changed from "transferred" to "pending", docketing reminders were generated for this application.

5. With respect to the docketing system that utilized the ALECTO® software, Ms. Lostumbo and I entered, maintained and revised the patent and trademark docketing records on this system. Ms. Lostumbo and I worked very closely together when updating and revising the Firm's docketing records. Additionally, as explained above, I was trained to continuously check every significant docket

entry made by myself as well as by Ms. Lostumbo. In view of this training, on a daily basis not only did I check every significant docket entry made by myself, but also by Ms. Lostumbo as well.

6. While employed by the Firm, I handled a large number of responsibilities, including updating and revising the Firm's docketing records (on the docketing system that utilized the ALECTO® software) upon receipt of instructions from a client or an attorney to abandon a pending patent application or issued patent. The Firm had very specific procedures in place to handle files that were to be abandoned. The procedure was as follows. First, when a client sent instructions or an attorney sent a letter advising a client that a certain patent application or patent was to be abandoned, it was required that a copy of such instructions or letter be provided to the Firm's docketing department. More specifically, the secretary of the attorney responsible for the patent application or patent was required to pull the correct file that was to be abandoned and place a copy of the instructions or letter on the outside of the file to be abandoned (which was usually done with a rubber band). Then, the entire file, with a copy of the instructions or letter rubber banded on top was given to the docketing department. Second, either Ms. Lostumbo or I would then place the file on a shelf specifically set up for all patent application or patent files that were to be abandoned. Third, if the patent application or patent to be abandoned had an immediate due date, Ms. Lostumbo and I would, within a few days of receipt of the file, revise all records on the Firm's docketing system relating to the relevant patent application or patent to reflect that the status of the patent application or patent was "abandoned" and all due dates in connection with this patent application or patent were "closed" (meaning completed). Alternatively, if there was not an immediate due date for the patent application or patent to be abandoned, Ms. Lostumbo and I would set aside some time, as our work priorities permitted, from our day and remove the patent applications or patents from the abandoned shelf and revise all records on the docketing system to reflect that the status of each of these patent applications or patents was

“abandoned”. Specifically, the way in which this was done in each instance was that either Ms. Lostumbo or I would sit at one of the Firm’s docketing computers. While one of us sat at the computer to revise the docketing records, the other physically worked with the file. The person working with the file would read the instructions or letter out loud so the person working at the computer could hear what the instructions were and what patent application or patent was to be abandoned. The person reading the letter would review the file attached to the instructions or letter to make sure that the correct file had been pulled and matched with the instructions or letter. Once this was verified, the person working with the file would provide the person sitting at the computer with the file number. The person working the computer would type in the file number and read the information in the docket record back to the person working with the file to verify that the docketing record matched the file and the instructions or letter. Once this information was verified, the person working with the file would write the file number on the instructions or letter, hole punch the instructions or letter, place the instructions or letter in the file and stamp the file “abandoned”. At the same time, the person working on the computer would revise all records on the docketing system to reflect that the status of the patent application or patent was “abandoned”. In the “comments” portion of the docketing record, the person working with the computer would type in who had provided instructions authorizing the abandonment of a patent application or patent and the date on which such instructions had been provided. Once the docketing record for a patent application or patent was revised to be “abandoned” no further reminders of any kind were ever again generated.

7. Sometime in November 2002, the docketing department received, from Mrs. Mueller’s secretary, the above-identified file, as well as the files for the following U.S. Application Numbers 09/504,337, 09/999,621, 10/000,104 and 10/001,060 with the following documents rubber banded around each of these files: (1) a copy of a letter that Mrs. Mueller received from the licensee of the above-identified application dated October 28, 2002 indicating that it did not

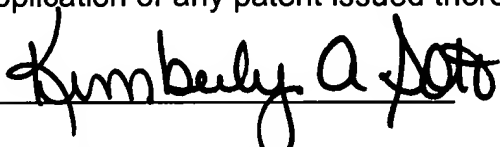
intend to continue prosecuting all of the utility patent applications directed to the Chrysanthemum Varieties but that it intended to continue prosecuting all plant patent applications to the Chrysanthemum Plants; and (2) a copy of a letter dated November 12, 2002 that Mrs. Mueller sent, via Federal Express to the Regents of the University of Minnesota ("University") informing it that its licensee did not intend to continue prosecuting the utility patent applications having the titles "Chrysanthemum Variety Named 95-157-6", "Chrysanthemum Variety Named 95-105-6", "Chrysanthemum Variety Named 92-333-2", "Chrysanthemum Variety 90-275-27", "Chrysanthemum Variety Named 98-M91-1" and "Chrysanthemum Variety Named 98-E90-15". In her letter, Mrs. Mueller also advised the University that the corresponding plant patent applications would continue to be prosecuted. Either Ms. Lostumbo or I received each of these files from Mrs. Mueller's secretary and placed them on the abandoned shelf.

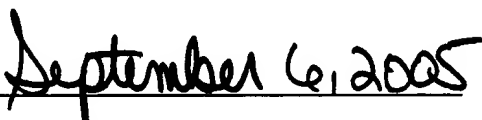
8. According to the Firm's docketing records, on January 13, 2003, either Ms. Lostumbo or I was working on the docketing computer. Whichever one of us was working on the computer, the other one (either Ms. Lostumbo or myself) would have been physically working with the above-identified plant patent application file as well as the utility patent application files for U.S. application numbers 09/504,337, 09/999,621, 10/000,104 and 10/001,060. Apparently, neither Ms. Lostumbo nor I realized that when we revised the status of the above-identified plant patent application from "pending" to "abandoned" pursuant to our established docketing procedures, that this application had been incorrectly entered into the docketing records as a "national" patent application instead of a "plant" patent application and that Mrs. Mueller's November 12th letter was attached to the wrong file. The application serial numbers for each of the utility patents to be abandoned were not listed in Mrs. Mueller's November 12th letter and the title in the utility patent application and plant patent application differed by only one word. Therefore, I believe that when Ms. Lostumbo and I revised this docketing record we believed that we were working with the correct docketing record and file for a utility patent application. Thereupon, we did not

realize that we were making a mistake when we revised the docketing record for the above-identified plant patent application from "pending" to "abandoned". Once the docketing record for the above-identified plant patent application was revised to reflect that the status of this application was abandoned, no further reminders were generated for this application.

9. On May 29, 2003, the docketing department received a Notice of Abandonment for the above-identified plant patent application (which was forwarded to the Firm's docketing department from Gardner Carton & Douglas). After reviewing the docketing record for this application and seeing that according to the docketing record this application was to be abandoned, either Ms. Lostumbo or I wrote on the top of the Notice of Abandonment that the file was on the abandoned shelf. We then matched the Notice of Abandonment with the file.

10. I hereby declare that all statements made herein are of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and such willful false statements may jeopardize the validity of the application or any patent issued thereon.


Kimberly Soto


Date